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22  
23 **UNITED STATES DISTRICT COURT**  
24  
25 **DISTRICT OF NEVADA**

26 RIGHHAVEN LLC, a Nevada limited-  
27 liability company,

28 Plaintiff,  
v.

THOMAS A. DIBIASE, an individual,  
Defendant.

AND RELATED COUNTERCLAIM

Case No.: 2:10-cv-01343-RLH-PAL

**JOINT DISCOVERY PLAN AND  
SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW  
REQUESTED**

29 Plaintiff/Counter-defendant, Righthaven LLC (“Righthaven”), and Defendant and  
30 Counterclaimant, Thomas A. DiBiase (“Mr. DiBiase”; collectively with Righthaven known  
31 herein as the “Parties”) by and through their respective counsel, pursuant to Rule 26(f)(2) of the  
32 Federal Rules of Civil Procedure, hereby submit their proposed Joint Discovery Plan and  
33

1 Scheduling Order (“Discovery Order”) with a special scheduling review request that the requisite  
 2 180-day discovery plan begin from the date of the Rule 26(f) conference, rather than the date of  
 3 first appearance by Mr. DiBiase.

4

5       **A.     Special Scheduling Review:** Due to the delay in completing a compliant Rule  
 6 26(f) conference the Parties request this Court consider a special scheduling request. The  
 7 Parties request the requisite 180-day discovery plan from the date of the Rule 26(f)  
 8 conference, rather than the date of first appearance by Mr. DiBiase. This special  
 9 scheduling request is a minor deviation from the date structure provided in LR 26-1(e)  
 10 and is sought in good faith to accommodate the delay in organizing the Rule 26(f)  
 11 conference and providing the court a Discovery Order. Consequently, allowing for a  
 12 standard 180-day discovery period from the date of the Rule 26(f) conference will  
 13 provide the Parties the time required to develop and litigate this copyright infringement  
 14 action without the prejudice of lapsed deadlines that currently exist under a 180-day  
 15 discovery plan from the date of the Mr. DiBiase’s first appearance.

16       **B.     Fed.R.Civ.P. 26(f) Conference:** On December 10, 2010, the Parties conducted  
 17 the discovery conference as required under Fed. R. Civ. P. 26(f). In attendance on behalf  
 18 of Righthaven was its Associate General Counsel Charles Coons, Esq. and Shawn A.  
 19 Mangano, Esq., of the law firm Shawn A. Mangano. Ltd.; and in attendance on behalf of  
 20 Mr. DiBiase was Bart Volkmer, Esq. of the law firm Wilson Sonsini Goodrich & Rosati  
 21 and Kurt Opsahl, Esq. and Corynne McSherry, Esq. of the legal services organization the  
 22 Electronic Frontier Foundation.

23       1. **Fed. R. Civ. P. 26(a) Changes:** The Parties shall submit their initial  
 24 disclosures no later than Friday, January 7, 2010, twenty-eight (28) days from  
 25 the date of the Early Case Conference (the “Discovery Conference”), as  
 26 required by Fed. R. Civ. P. 26(a).<sup>1</sup>

27       2. **Fed. R. Civ. P. 26(f)(3)(A)-(B) Scope and Timing of Discovery:** The Parties

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28       <sup>1</sup> Fourteen days from the date of the Discovery Conference falls on Friday, December 24, 2010. As such, the Parties propose to submit the initial disclosures after the holidays on Friday, January 7, 2011.

believe that discovery should extend to the full extent allowed by the Federal Rules of Civil Procedure and should not be limited to any particular issues.

a. The Parties propose the following timetable for discovery, based on a six-month schedule:

i. **Discovery Cut-Off Date:** The cut-off date for fact discovery shall be the **8th day of June, 2011**, 180 days from the date of the Discovery Conference. The cut-off date for expert discovery shall be the **22nd day of July 2011**, 44 days after the close of fact discovery.

ii. **Amending the Pleadings and Adding Parties:** All motions to amend the pleadings or to add parties shall be filed not later than the **10th day of March, 2011**, 90 days prior to the scheduled close of discovery.

iii. **Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):** Disclosures concerning experts shall be made no later than the **22nd day of June, 2011**, 30 days before the expert discovery cut-off date. Disclosures concerning rebuttal experts shall be made no later than the **1st day of July, 2011**, 9 days after the initial disclosure of experts.

iv. **Dispositive Motions:** The date for filing dispositive motions shall not be later than the **21th day of August, 2011**, 28 days after the discovery cut-off date. In the event that the discovery period is extended from the discovery cut-off date set forth in this Discovery Order, the date for filing dispositive motions shall be extended to be not later than 30 days from the subsequent discovery cut-off date.

v. **Pretrial Order:** The date for filing the joint pretrial order shall not be later than the **16th day of September, 2011**, 28

1 days after the cut-off date for filing dispositive motions. In the  
2 event that dispositive motions are filed, the date for filing the  
3 joint pretrial order shall be suspended until 30 days after  
4 decision on the dispositive motions or until further order of the  
5 court. In the further event that the discovery period is extended  
6 from the discovery cut-off date set forth in this Discovery  
7 Order, the date for filing the joint pretrial order shall be  
8 extended in accordance with the time periods set forth in this  
9 paragraph.

10 vi. **Extensions or Modifications of the Discovery Plan and**  
11 **Scheduling Order:** Any stipulation or motion must be made  
12 not later than the **19th day of May, 2011**, 20 days before the  
13 discovery cut-off date.

14 vii. **Interim Status Report:** The Parties shall file the interim  
15 status report, if required, by the **11th day of April, 2011**, 58  
16 days before the discovery cut-off date.

17 3. **Fed.R.Civ.P. 26(f)(3)(C) Discovery of Electronically Stored Information:** The  
18 Parties agree to preserve documents in accordance with the Federal Rules of  
19 Civil Procedure, including electronically-stored information. The disclosure  
20 or discovery of electronically stored information shall be handled as follows:

21 a. As used in this section 3(a), the following terms shall be defined as  
22 follows:

23 i. “Alter” shall mean alter, change, modify, revise, corrupt, delete  
24 and/or destroy, but, in accordance with Fed. R. Civ. P. 37(e)  
25 shall not include alteration as a result of the routine, good-faith  
26 operation of an electronic information system.

27 ii. “Custodial Persons” shall mean non-parties who have in their  
28 possession, custody, or control documents relating to the

1 claims or defenses in this action. .

2 iii. "Party" shall mean Righthaven LLC (including its employees,  
3 partners, agents, subsidiaries, parents) and Thomas DiBiase.

4 iv. "Person" shall mean any individual, corporation, partnership,  
5 general partner, limited partnership, limited-liability  
6 partnership, limited-liability company, member, trust,  
7 association, organization or any form of entity whatsoever.

8 b. Each Party shall preserve and not Alter documents falling within  
9 their preservation obligations under the Federal Rules of Civil  
10 Procedure, including electronically stored information, in their  
11 existing format regardless of any pre-existing retention policies.  
12 Parties may, however, continue the routine, good-faith operation of  
13 electronic information systems.

14 c. Each Party shall instruct all Custodial Persons to preserve and not  
15 Alter documents falling within their preservation obligations under  
16 the Federal Rules of Civil Procedure, including electronically  
17 stored information, in their existing format regardless of any pre-  
18 existing retention policies. Custodial Persons may, however,  
19 continue the routine, good-faith operation of electronic information  
20 systems.

21 d. Each Party shall produce electronically-stored data in multi-page  
22 OCR .tif format, with Concordance load files with specifications as  
23 agreed upon by the parties (for compatibility with the most  
24 common litigation document review system), with the exception of  
25 Excel or similar spreadsheets which shall be produced in native  
26 format. If a party receiving such production contends that a native  
27 or other non-.tif format is necessary to ascertain discoverable  
28 information, it may request a party to produce in native format.

1 Any dispute as to the necessity of production in native format shall  
2 be resolved by the Magistrate Judge.

3 e. The parties shall meet and confer regarding the meta-data fields  
4 that shall accompany the production of electronically stored  
5 information, concurrent with the production of such information.  
6 If a Party wishes to withhold any metadata from the agreed upon  
7 fields it must seek agreement from opposing counsel or a  
8 protective order protecting against such production from the court.

9

10 4. Fed.R.Civ.P. 26(f)(3)(D) Claims of Privilege or Protection as Trial-  
11 Preparation Material: A party claiming that any item within the scope of  
12 discovery is protected as either privileged or as trial-preparation material,  
13 pursuant to Fed.R.Civ.P. 26(b)(5), shall submit a detailed privilege log  
14 detailing the nature of the privilege or the basis for the item's or items'  
15 protection as trial preparation material. Such a privilege log shall be shall be  
16 limited to communications prior to the commencement of this action, and  
17 shall be produced within (21) days following the date that the documents  
18 memorialized in the privilege log were to be produced by the party from  
19 whom discovery is being sought. If a party becomes aware of a privileged  
20 document having been produced the parties shall comply with Fed. R. Civ. P.  
21 26(b)(5)(B).

22

23 5. Fed.R.Civ.P. 26(f)(3)(E) Changes: None at this time.

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25 6. Fed.R.Civ.P. 26(f)(3)(F) Orders: None at this time.

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27 C. Later-Appearing Parties: A copy of this Discovery Order shall be served on  
28 any person who is hereafter added as a party to this action within five days of that later-

1 appearing Party's first appearance. This Discovery Order shall apply to such later-  
2 appearing party or parties, unless: (1) a stipulation of the Parties is approved by this  
3 Court, or (2) this Court, on motion for good cause shown, orders otherwise.

4

5 Dated this 13th day of December, 2010.

6 SHAWN A. MANGANO, LTD.

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36 *Attorneys for Defendant Thomas A. DiBiase*

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38 **IT IS SO ORDERED:**

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